Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-338

J. C. BALLENTINE,
HATCHER POINT MALL MERCHANTS
ASSOCIATION, INC. *et al.*,

Appellants,

v.

R.W. WILLINGHAM, R.L. TONNING, C.C. McCRAY, SAM DUBOSE, T. HENRY CLARKE, AS COMMISSIONERS OF THE CITY OF WAYCROSS; TOM GATTIS, AS CITY CLERK AND TREASURER OF THE CITY OF WAYCROSS; AL CRACE, AS CITY MANAGER, AND THE CITY OF WAYCROSS, GEORGIA, *et al.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT
OF GEORGIA

MOTION OF APPELLEES TO DISMISS APPEAL

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TABLE OF CONTENTS

	Page
MOTION TO DISMISS APPEAL	1
THERE IS NO SUBSTANTIAL FEDERAL QUESTION	3
OTHER ISSUES BY APPELLANTS	6
CONCLUSION	9

TABLE OF AUTHORITIES

Cases:

Cedar Rapids v. Cox, 250 Iowa 457, 93 N.W. 2d 216, appeal dismissed, 359 U.S. 498, 3 L. Ed. 2d 976, 79 S. Ct. 1118	4
Gomillion v. Lightfoot, 364 U.S. 339, 5 L. Ed. 2d 110, 81 S. Ct. 125	5
Hunter v. Pittsburg, 207 U.S. 161, 52 L. Ed. 151, 28 S. Ct. 40	3,5
Lee v. City of Jesup, 222 Ga. 530, 150 S.E. 2d 836, cert. denied, 386 U.S. 993, 18 L. Ed. 2d 337, 87 S. Ct. 1307	7,8
Panlos v. Stephenson, 213 Ga. 816(2), 102 S.E. 2d 165	5
Parker v. Mayor &c. of Savannah, 216 Ga. 210, 213, 115 S.E. 2d 555	5
Phillips v. City of Atlanta, 210 Ga. 72, 77 S.E. 2d 723	3,8
Walker Electrical Co. v. Walton, 203 Ga. 246, 252, 46 S.E. 2d 154	5

U.S. Constitution:

U.S. Const. amend. XIV	2,5,6,8
U.S. Const. amend. XV	5,6

Page

State Constitution:

Ga. Const. art. I, §I, par. III, (Ga. Code Ann. §2-103) 7

Ga. Const. art. I, §IV, par. I, (Ga. Code Ann. §2-401) 7

Ga. Const. art. III, §I, par, I, (Ga. Code Ann. §2-1301) 3,8

Ga. Const. art. III, §VII, par. XIII, (Ga. Code Ann. §2-1915) 2

Statutes:

United States Code:
42 U.S.C. §1973c (Voting Rights Act of 1965) 9

Code of Georgia:
Ga. Laws 1972, p. 2970 2
Ga Laws 1946, p. 82 (Ga. Code Ann. §47-801) 2,6
Ga. Laws 1965, p. 298 (Ga. Code Ann. §69-1015) 7,8

Other Authorities:

56 Am. Jur. 2d 111, §55 3

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ON APPEAL FROM THE SUPREME COURT OF GEORGIA

MOTION OF APPELLEES TO DISMISS APPEAL

Appellees move the Court to dismiss the appeal herein taken on the ground that said appeal does not present a substantial federal question.

This is an appeal from a decision of the Supreme Court of Georgia affirming the judgment of the lower court which dismissed the declaratory judgment action of appellants. In their complaint appellants sought to have Georgia Laws 1972, pp. 2970, as amended, declared unconstitutional and to enjoin this Act from taking effect. This Act of the General Assembly of Georgia annexed to the corporate limits of the City of Waycross a certain area known as Hatcher Point Mall, and appellants are merchant tenants of the mall. They sought to enjoin the annexation alleging that it would subject them to the payment of city taxes, licenses, and fees.

The main contention of appellants was that they did not receive any actual notice of the proposed annexation, did not give their written consent, and that the published notice of the proposed legislation was insufficient. The notice complained of was published in accordance with the requirements of Article III, Section VII, Paragraph XIII, of the Constitution of Georgia of 1945 (Ga. Code Ann. §2-1915), and of the statutory provision which carries the constitutional requirement into effect, Georgia Laws 1946, p. 82 (Ga. Code Ann. §47-801). Appellants seek to have §47-801 declared unconstitutional as violative of the Fourteenth Amendment of the Constitution of the United States.

The appellants also alleged other violations of their rights as set forth on pages 8 and 9 of the Jurisdictional Statement, which will be dealt with in our brief and argument hereinafter.

THERE IS NO SUBSTANTIAL FEDERAL QUESTION

It should be noted at the outset that the annexation of the area here involved was accomplished by a local act of the General Assembly of Georgia, and not by the City of Waycross. The power and authority to create and alter municipal systems of government, including the power to alter and extend municipal boundaries, is vested in the General Assembly by the Constitution of Georgia of 1945.

Phillips v. City of Atlanta, 210 Ga. 72, 77 S.E. 2d 723.

Article III, Section I, Paragraph I, Constitution of Georgia, (Ga. Code Ann. §2-1301).

In the absence of constitutional limitations, it is generally considered that the power of a state legislature over the boundaries of the municipalities and counties of the state is absolute and that the legislature has power to extend the boundaries of a municipal corporation, or to authorize an extension of its boundaries, without the consent of the inhabitants of the territory annexed, or the municipality to which it is annexed, or even against their express protest. 56 Am. Jur. 2d 111, §55.

In *Hunter v. Pittsburg,* 207 U.S. 161, 52 L. Ed. 151, 28 S. Ct. 40, this Court said:

> "Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The

number, nature, and duration of the powers conferred upon these corporations *and the territory over which they shall be exercised* rests in the absolute discretion of the state . . . The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. *All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme, and its legislative body, conforming its action to the state Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States.*" (Emphasis supplied.)

Annexation of land by the legislature without the assent of or notice to the inhabitants is not a denial of due process. It follows that notice by publication does not violate the due process requirements of the federal and state constitutions.

In *Cedar Rapids v. Cox*, 250 Iowa 457, 93 N.W. 2d 216, the court said:

> "If, as we have held, extension of municipal boundaries without assent of or any notice to the inhabitants is not a denial of due process, certainly annexation upon published notice does not have that result."

The *Cedar Rapids* case was appealed to this Court, and the appeal was dismissed for want of a substantial federal question. 359 U.S. 498, 3 L. ed. 2d 976, 79 S. Ct. 1118.

In the case at hand the published notice of intention to apply to the General Assembly for passage of this

local or special act in all respects followed the state Constitutional and statute requirements. The contents of the notice were in compliance with the interpretation of the Georgia Constitution provision by the Supreme Court of Georgia.

> *Walker Electrical Co. v. Walton*, 203 Ga. 246, 252, 46 S.E. 2d 184
>
> *Parker, et al. v. Mayor &c. of Savannah*, 216 Ga. 210, 213, 115 S.E. 2d 555
>
> *Panlos, et al. v. Stephenson, et al.*, 213 Ga. 816(2), 102 S.E. 2d 165

Appellants cite *Gomillion v. Lightfoot*, 364 U.S. 339, 5 L. ed. 110, 81 S. Ct. 125, as relaxing the rule of *Hunter v. Pittsburg, supra.* While the *Gomillion* case involved annexation, it turned on the fact that the boundaries of the City of Tuskegee, Alabama were changed and redistricted in such a manner as to deny the right to vote to Black citizens in violation of the Fifteenth Amendment. It is interesting to note that Gomillion states:

> "In short, the cases that have come before this Court regarding legislation by States dealing with their political subdivisions fall into two classes: (1) those in which it is claimed that the State, by virtue of the prohibition against impairment of the obligation of contract (Art. I, §10) and of the Due Process Clause of the Fourteenth Amendment, is without power to extinguish, or alter the boundaries of, an existing municipality; and (2) in which it is claimed that the State has no power to change the identity of a municipality whereby citizens of a pre-existing municipality suffer serious economic disadvantage.
>
> "Neither of these claims is supported by such a specific limitation upon State power as confines

> the States under the Fifteenth Amendment. As to the first category, it is obvious that the creation of municipalities – clearly a political act – does not come within the conception of a contract under the Dartmouth College Case. (U.S.) 4 Wheat 518, 4 L. Ed. 629. *As to the second, if one principle clearly emerges from the numerous decisions of this Court dealing with taxation it is that the Due Process Clause affords no immunity against mere inequalities in tax burdens, nor does it afford protection against their increase as an indirect consequence of a State's exercise of its political powers.*" (Emphasis supplied.)

It should be seen readily that Georgia Laws 1946, p. 82 (Ga. Code Ann. §47-801), providing for published notice of a proposed local act, even if not required by general law or the rulings of this Court, does not violate the Fourteenth Amendment. Indeed, the contention raised by appellants is foreclosed by prior rulings of this Court, and no Federal question is presented.

1. OTHER ISSUES RAISED BY APPELLANTS

The other issues presented by appellants as being violative of the provisions of the Fourteenth Amendment were the delegation of authority for annexation in this case from the General Assembly to the municipality by general law; the applicability of the general statutes to this case; the declared intention of the General Assembly by general law that no local or special laws shall be enacted on subject matters over which the municipalities are authorized to act pursuant to said sections; the prohibitions against the annexation of a territory not contiguous to the municipal limits;

the prohibitions against granting tax concessions and exemptions. (Jurisdictional Statement, pp. 8, 9, 18).

These issues raised by appellants present no substantial federal question, but are State matters which the Supreme Court of Georgia heard and decided. By its silence on some of the many allegations of appellants the Georgia Court spoke very eloquently.

In its opinion the Court below cited *Lee v. Jesup.* We believe that this case reviews and rejects most of the arguments of appellants. In this case petitioners sought to have a special Act amending the charter of the City of Jesup and extending the corporate limits declared unconstitutional and void in that the Act in question violated Art. I, Section IV, Par. I of the Constitution of Georgia (Code Ann. §2-401), which provides that laws of a general nature shall have uniform operation throughout the State, and no special law shall be enacted in any case for which provision has been made by an existing general law, and that no general law affecting private rights shall be varied in any particular case, by special legislation, except with the free consent, in writing, of all persons to be affected thereby. The petitioners also alleged that the Act in question was contrary to general law, including the Home Rule Act of 1965 (Ga. L. 1965, p. 298), Art. I, Sec. I, Par. III of the Constitution of Georgia (Code Ann. §2-103), providing for due process of law, and the due process clause of the Fourteenth Amendment of the United States Constitution. The Court affirmed a judgment of the trial court dismissing the petition on general demurrer, saying:

> "1. The existence of prior statutes permitting the enlargement of boundaries does not deprive the General Assembly of the power to alter and

extend municipal boundaries without the consent of the persons affected thereby. *Toney v. Mayor &c. of Macon,* 119 Ga. 83(1) (46 SE 80); *White v. City of Atlanta,* 134 Ga. 532(5) (68 SE 103); *Murray v. City of Waycross,* 171 Ga. 484(4) (156 SE 38). The authority to create and alter municipal systems of government is vested in the legislature by the Constitution of Georgia. *Phillips v. City of Atlanta,* 210 Ga. 72 (77 SE 2d 723); Art. III, Sec. I, Par. I (*Code Ann.* §2-1301) and Art. XV, Sec. I, Par. I (*Code Ann.* §2-8301) of the Constitution of Georgia. Contrary to the contention of the Appellant, the Home Rule Act of 1965 does not provide the sole method by which the General Assembly may amend a city charter so as to change the city boundaries. Section 2 of the Home Rule Act provides: 'No municipality shall be incorporated, dissolved, merged or consolidated with any other municipality or municipal boundaries changed, *except by local act of the General Assembly* or by such methods as may be provided by general law.' (Ga. L. 1965, pp. 298, 299). (Emphasis supplied). *Thus the General Assembly has retained the power to change municipal boundaries, and to do so by special act. The Act here is a valid exercise of authority by the General Assembly.*" (Emphasis supplied)

"2. An Act extending municipal boundaries does not violate the constitutional guarantee of due process of law because it subjects property owners in the area annexed to taxation by the municipality (*Schneider v. City of Folkston,* 207 Ga. 434(2) (62 SE 2d 172); nor does it deny to such property owners equal protection of the law within the meaning of the Fourteenth Amendment to the Constitution of the United States. (*Smith v. Mayor &c. of Macon,* 129 Ga. 227(2) (58 SE 713)."

Lee, et al v. City of Jesup, 222 Ga. 530, 150 S.E. 2d 836, cert. den. 386 U.S. , 993, 18 L. ed. 2d 337, 87 S. Ct. 1307.

The contention raised by appellants in their brief to the lower court concerning the Voting Rights Act of 1965 (No. 13 on page 13 of the Jurisdictional Statement) was not raised by their pleadings, and properly was not considered by the lower court.

CONCLUSION

Wherefore, appellees urge this Court to dismiss the appeal because it does not present a substantial Federal question.

Respectfully submitted,

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